

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

HOUSTON AREA URBAN LEAGUE, et al.,
Plaintiffs,

v.

GREGORY WAYNE ABBOTT, et al.,
Defendants.

5:21-cv-0844-XR

MI FAMILIA VOTA, et al.,
Plaintiffs,

v.

GREG ABBOTT, et al.,
Defendants.

**HOUSTON AREA URBAN LEAGUE AND MI FAMILIA VOTA PLAINTIFFS'
RESPONSE TO STATE DEFENDANTS' NOTICE OF SUPPLEMENTAL
AUTHORITY**

Houston Area Urban League, Delta Sigma Theta Sorority, Inc, The Arc of Texas, and Jeffrey Clemmons (HAUL Plaintiffs) and Mi Familia Vota, Marla Lopez, Marlon Lopez, and Paul Rutledge (MFV Plaintiffs) join the arguments made by LUPE Plaintiffs in response to the State Defendants' notice of supplemental authority. ECF No. 358. In addition, HAUL Plaintiffs and MFV Plaintiffs write to illustrate three points specific to their Second Amended Complaint.

1. First, the supplemental authority provided by the State Defendants does nothing to undermine binding precedent in *Texas Democratic Party v. Abbott*, 978 F.3d 168, 179–80 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 1124 (2021), that the Secretary's statutory duty to design the application form for mail-in ballots sufficiently connects him to the enforcement of SB 1's unlawful identification requirements in sections 5.02, 5.03, 5.07, and 5.08. The State Defendants' assertion that "Plaintiffs do not challenge the design or content of the forms," Notice, ECF No. 333 at 3 (quoting *Richardson v. Flores*, No. 20-50774, 2022 WL 795859, at *3 (5th Cir. Mar. 16, 2022)), is

simply wrong. Through their challenge to sections 5.02, 5.03, 5.07, and 5.08, HAUL Plaintiffs and MFV Plaintiffs plainly challenge changes to the content of mail-ballot applications, which the Secretary designs. *See* Second Am. Compl., ECF No. 199, ¶ 26(g); *Abbott*, 978 F.3d at 179–80.

The reasoning in *Abbott* also makes plain that the Secretary has a sufficient enforcement connection to SB 1’s assistor provisions and its ban on ballot drop boxes in order to name him as a defendant under *Ex parte Young*. The Secretary has the express duty to design forms to implement SB 1’s assistor provisions. *See* SB 1 §§ 6.01(h), 6.03(b). Moreover, section 4.12, which prohibits drop boxes, requires the Secretary to design the roster that local elections officials *must* use to log mail ballots that are delivered by hand. *See* SB 1 § 4.12(a-2).

2. Second, like the LUPE Plaintiffs, the HAUL Plaintiffs and the MFV Plaintiffs do not rely on the Secretary’s general duties, but merely point to them as a background principle that highlights the Secretary’s intimate connection to enforcement of the election code. *See* ECF No. 252 at 7. The HAUL Plaintiffs and the MFV Plaintiffs then identify the Secretary’s specific enforcement authority under the challenged provisions. *See id.* at 8–10.

3. Finally, the Fifth Circuit’s clarification that *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017), applies only to standing, *see Texas Alliance for Retired Americans v. Scott*, No. 20-40643, 28 F.4th 669 (5th Cir. Mar. 16, 2022), highlights that, under the Fifth Circuit’s precedent, standing is a lower threshold than sovereign immunity. In other words, if the official has a sufficient enforcement connection to allow plaintiffs to invoke the *Ex parte Young* exception to sovereign immunity, that enforcement connection also suffices to show that an injunction against the official exercising that enforcement authority will redress the plaintiffs’ harm. *See City of Austin v. Paxton*, 943 F.3d 993, 1002 (5th Cir. 2019) (noting significant overlap between standing and *Ex parte Young* analysis). The fact that the Secretary of State has the requisite enforcement authority under *Ex parte Young* eliminates any concern regarding standing.

For these reasons, and for the reasons set forth in ECF Nos. 252 and 358, the Court should deny the State Defendants' motion to dismiss the HAUL and MFV Plaintiffs' Second Amended Complaint.

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2022, I electronically filed the foregoing Response to State's Notice of Supplemental Authority.

/s/ Georgina Yeomans
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